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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 IN RE: MIDLAND CREDIT
12 MANAGEMENT, INC. TELEPHONE
13 CONSUMER PROTECTION ACT
14 LITIGATION

15 This document relates to the member
16 cases listed on Exhibit 1 to this Order

17 MDL No. 2286-MMA (MDD)

18 **ORDER DIRECTING PLAINTIFFS**
19 **IN CERTAIN INDIVIDUAL**
20 **MEMBER CASES TO FILE STATUS**
21 **REPORTS IDENTIFYING**
22 **UNRELEASED CLAIMS OR**
23 **PARTIES**

24 On December 2, 2016, the Court entered its Amended Order Adopting Reports and
25 Recommendations; Granting Final Approval of Class Action Settlement; Granting
26 Motion for Attorneys' Fees, Costs, and Incentive Awards ("Order" for the "Settlement").
27 *See* Doc. No. 434. The settlement contained a class-wide release pertaining to certain
28 claims described therein. *See* Doc. Nos. 281-3, 348, 432.¹

29 Now that the lead Class Action is resolved, the Court intends to manage the
30 MDL's remaining member cases, as well as those cases subsequently transferred to this
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¹ Pursuant to the Order, certain of the MDL cases were dismissed and certain persons were named on the
33 Order's Exhibit A as having excluded themselves from (opted out of) the Settlement.

1 Court for inclusion in the MDL, and to determine which claims in those pending cases
 2 have been disposed of by the Settlement. Each of the cases on Exhibit 1 attached hereto
 3 involves one or more plaintiffs who did not opt out of the class settlement, and (i) asserts
 4 Telephone Consumer Protection Act (“TCPA”) claims that may have arisen outside the
 5 Class Period of November 2, 2006 through August 31, 2014, inclusive, and/or (ii) asserts
 6 non-TCPA claims that may or may not be affected by the class settlement. A number
 7 of these cases may have been resolved, in whole or in part, by the settlement and release.
 8 However, the proper disposition of these cases is not clear since the Court cannot
 9 determine from the face of the complaints on file in those cases whether the claims
 10 pleaded are covered by the Settlement and its Release.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 **A. Plaintiffs’ Status Reports:**

13 For each of those cases named in Exhibit 1, **within thirty (30) days of the date**
 14 **this Order is filed, the Court requires the plaintiff(s) in each of those cases to file a**
 15 **Status Report** containing the information requested below. The Status Report must:

- 16 1. Identify all claims alleged in the complaint that plaintiffs contend are not
 17 released by the Settlement.
- 18 2. For each claim that plaintiffs contend is not released by the Settlement, identify
 19 (i) the plaintiff or plaintiffs on whose behalf the claim is asserted; (ii) the theory
 20 on which the claim is based; and (iii) if the claim is based on allegedly
 21 autodialed or prerecorded-voice calls made outside the Settlement Class Period,
 22 the dates on which the calls were made, to the extent the plaintiff possesses that
 23 information.

24 Lengthy submissions or citations to legal authority are not required. However the status
 25 report must be sufficient to apprise the Court and the parties of the plaintiff’s view as to
 26 which of his or her pending claims should proceed, and why they should proceed.

27 *Each plaintiff’s status report must be filed on the docket of the individual member*
 28 *case and the docket of the MDL.*

1 **B. Defendants' Responses to Reports:**

2 **Within sixty (60) days of the date of this order,** Defendants must file a **Response**
3 **to Plaintiffs' Status Reports** with the Court sorting the 41 cases listed on Exhibit 1 into
4 three categories, based on the plaintiffs' statements.

5 *Defendants' response must be filed on the docket of the MDL only, and should not
6 be filed on the dockets of the individual member cases.*

7 The categories shall be as follows.

8 **Category 1: Cases in which the plaintiffs have, in their Status Reports,
9 conceded that the entire complaint is resolved by the class settlement and release.**

10 Any plaintiff who believes his or her case was wrongly included on this list may advise
11 the Court **within ten (10) days of Defendants' filing**, in which case Defendants will
12 revise their lists appropriately. Once this list of individual member cases is final,
13 Defendants must submit a separate proposed order for each individual member case,
14 dismissing the action with prejudice.

15 **Category 2: Cases where Defendants contend there is no dispute between
16 Defendants and the plaintiff as to which claims are released and which may proceed.**

17 Any plaintiff who believes his or her case was wrongly included on this list may advise
18 the Court **within ten (10) days of Defendants' filing**, in which case Defendants will
19 revise their lists appropriately. Once this list of individual member cases is final,
20 Defendants must submit a separate proposed order for each individual member case,
21 dismissing with prejudice any claims that are undisputedly released. The plaintiffs and
22 Defendants will be expected to stipulate to the Court's suggestion of remand of any
23 remaining claims that do not arise from the alleged use of an automatic telephone dialing
24 system ("ATDS").

25 **Category 3: Cases where there is a dispute between Defendants and the
26 plaintiff(s) as to which causes of action are released and which may proceed.** As to
27 cases in this category, Defendants must submit with their statement a proposed briefing
28 schedule for resolving disputes about the release of claims. The plaintiffs in these cases

1 may submit an alternative briefing schedule if they do not agree with Defendants'
2 proposed briefing schedule.

3 **C. Further Proceedings**

4 Once the Court determines which cases identified in Exhibit 1 will remain in the
5 MDL, the Court will entertain motions by counsel in the remaining individual member
6 cases, including those cases that excluded themselves from the Settlement, to appoint
7 new lead and liaison counsel. After the Court appoints new lead and liaison counsel,
8 further consolidated proceedings will occur, including the entry of a Case Management
9 Order to address, *inter alia*, the coordination of common discovery and deadlines for
10 motion practice.

11 **D. Conclusion**

12 **Plaintiffs in the individual member cases listed in Exhibit 1 who intend to**
13 **pursue some or all of their pending claims must file a Status Report in response to**
14 **this Order. Failure to comply with this Order, including the filing of the required**
15 **Status Report, will result in the issuance by the Court of an Order to Show Cause**
16 **why Plaintiff's individual member case should not be dismissed in its entirety.**

17 Within three (3) business days of date this Order is filed, Liaison Counsel shall
18 serve a copy of this Order on any plaintiffs who, as reflected on the master docket, are
19 not currently receiving the Court's ECF notifications.

20 Plaintiffs in any cases transferred to the MDL after the date this Order is filed, are
21 not bound by the terms and conditions set forth in this Order.

22 *The Clerk of Court is instructed to file this Order on the docket of MDL No. 2286*
23 *and the dockets of the individual member cases listed in Exhibit 1.*

24 **IT IS SO ORDERED.**

25 DATE: December 22, 2016



HON. MICHAEL M. ANELLO
United States District Judge